IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO. 8 OF 2002.

Mrs. Cristalina Amelina Fernandes,
wife of late Angelico Cruz
Fernandes, r/o H.No.5, Banda,
Assolna, Salcete-Goa. ... Petitioner.

Versus

1. State of Goa through
   Cuncolim Police Station,
   Cuncolim.
2. Smt. Maria Antoneta Gomes e
   Fernandes, wife of late
   Angelico Cruz Fernandes,
   r/o H. No. 199, Agonda,
   Canacona, Goa.
3. Mrs. Cristalina Brizida Fernandes,
   d/o late Angelico Cruz Fernandes,
   housewife, r/o H. No. 199,
   Agonda, Canacona, Goa.
4. Miss Cefila Cipriana Fernandes,
   d/o late Angelico Cruz Fernandes
   r/o H. No. 199, Agonda,
   Canacona, Goa.
5. Miss Mericia Fernandes,
   d/o late Angelico Cruz Fernandes,
   r/o H. No. 199, Agonda,
   Canacona, Goa. ... Respondents.

Mr. S.G. Dessai, Senior Advocate with Mr. Arun Bras De Sa, Advocate for the Petitioner.

Mr. V.P. Thali, Addl. Advocate General with Miss S. Linhares, Addl. Govt. Advocate for the Respondent No. 1.

Mr. Nitin Sardessai, Advocate for the Respondents 2 to 5.

Coram: P.V. HARDAS, J.

Date: 15th March 2002.

ORAL JUDGMENT.

Rule. By consent, rule made returnable forthwith.

2. The filing of this petition is as a result of acrimonious legal battle enmeshed in sentiments and legal wrangles over the custody of the dead body of one Angelico Cruz Fernandes who, after consumption of poison, expired in the Hospicio Hospital, Margao, on 19th January 2002. After the death of the deceased the present petitioner and the respondent no. 2 moved applications before the Sub-Divisional Magistrate for handing over the possession of the body of deceased Angelico Cruz Fernandes. The learned Sub-Divisional Magistrate by his Judgment and Order dated 4th February 2002, after elaborately discussing the pros and cons and the question of entitlement, ordered that the custody of the body be handed over for burial to the present petitioner. Incidentally, it may be stated without going into the niceties, that the petitioner before the Court claims to be the second wife of deceased Angelico Cruz Fernandes.

3. The second respondent in the petition, who claims to be the first wife of the deceased Angelico Cruz Fernandes, being aggrieved by the Judgment and Order of the Sub-Divisional Magistrate, Margao, Goa, filed Criminal Revision Application No. 6 of 2002 before the Additional Sessions Judge, Margao. The learned Additional Sessions Judge, Margao, by his Judgment, dated 18th February 2002, allowed the

Criminal Revision Application filed by the second respondent and quashed and set aside the Judgment and Order of the learned Sub-Divisional Magistrate, dated 4th February 2002, principally on the ground that the Sub-Divisional Magistrate while exercising his powers under Sections 174 and 176 of the Code of Criminal Procedure did not have either the power or jurisdiction to direct as to whom the custody of the dead body should be given for burial. The learned Additional Sessions Judge in his aforesaid Judgment discussed in detail the Will, which was stated to have been executed by the deceased just a few days prior to his death, expressing his wish to be buried at Assolna Cemetery. The learned Additional Sessions Judge in his Judgment, particularly the concluding portion, has expressed his opinion that he did not find any reason why the dead body should not be taken back by the respondent no. 2 therein the petitioner herein.

4. The acrimonious legal battle did not end with the passing of the Order by the learned Additional Sessions Judge as the respondent no. 2 therein the present petitioner herein has filed the present petition with a prayer that the Order of the learned Additional Sessions Judge be quashed and set aside and in terms the Order of the learned Sub-Divisional Magistrate be restored permitting her to take the

custody of the body of the deceased for burial.

5. Meanwhile, the respondent no. 2 herein had filed a Civil Suit before the learned Civil Judge, Senior Division at Margao in which a prayer for ad interim exparte injunction is made and it is stated that in pursuance of the filing of the suit, the learned Civil Judge, Senior Division, Margao, had issued notice to the defendants therein and it is further stated before me that in pursuance to the notice, the present petitioner has also filed her written statement/reply.

6. It is unfortunate that a legal battle of this nature should at all crop up and come up for consideration before the Court where two wives, one claiming to be the first and the other the second are fighting for the custody of the body of the deceased. Be that as it may, more often than not, sentiments prompt the filing of proceedings and this case is no exception. This Court is sympathetic and understands the sentiments of both the wives and, according to me, as the Civil Court is seized of the matter, the Civil Court will decide (1) the entitlement of either the petitioner or the respondents 2 to 5 herein to the custody of the dead body and (2) the entitlement or the right of the parties to perform the religious rites

connected with the burial. I am also informed at the Bar that the Civil Suit is fixed on 27th March 2002.

7. The body of the deceased Angelico Cruz Fernandes is at present kept in the morgue and I am told that the decomposition has set in and, according to me, it is necessary to direct the learned Civil Judge, Senior Division, Margao, to expeditiously dispose of the application for injunction, which is said to be pending.

8. The learned Civil Judge, Senior Division, Margao should, therefore, expeditiously decide the injunction application, which is said to be fixed on 27th. Both the counsel make statements at the Bar before me that they will co-operate with the Civil Judge, Senior Division, Margao, in expeditious disposal of the case. The learned Civil Judge, Senior Division, Margao, shall hear the injunction application on 27th March 2002 or earlier, if requested by the parties. The plaintiff and the defendants therein are at liberty (1) to file such other affidavits or additional written statements or replies or counter affidavits before 27th March 2002 and (2) to produce such other documents on which they propose to rely. The learned Civil Judge, Senior Division, Margao, shall after hearing the

parties on 27th March 2002 decide the said application on or before 30th March 2002.

9. With the aforesaid directions, Criminal Writ Petition is, accordingly, disposed of. Rule stands discharged accordingly. True copy duly authenticated by the Court Superintendent be handed over to the parties to act upon.

(P.V. HARDAS)
JUDGE.

ed's.